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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1938**

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# No. 418

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A. B. HALE, AS CHAIRMAN, AND E. A. McCOLSKEY ET AL., ETC.,

*Appellants.*

*vs.*

BIMCO TRADING, INC., AND BROWARD COUNTY PORT AUTHORITY.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

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## JURISDICTIONAL STATEMENT.

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Now come A. B. Hale, as Chairman, and E. A. McColskey, John Hughey Faulk, Brooks W. Bateman and James W. Perkins, as and constituting the State Road Department of the State of Florida, appellants herein, and submit the following statement particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the final decree

entered in this cause on the 14th day of June, A. D. 1938, wherein said defendants, as and constituting the State Road Department of the State of Florida, were permanently enjoined and forever restrained from enforcing or seeking to enforce that certain Act of the Legislature of the State of Florida, known as Senate Bill No. 760 of 1937, in the particulars set out in the final decree:

(a) The statutory provision believed by appellants to sustain the jurisdiction of the Supreme Court of the United States is Section 266 of the Judicial Code, the same being Section 380, of Title 28, of the United States Code Annotated.

(b) The validity of that certain Act of the Legislature of the State of Florida, known as Senate Bill No. 760 of 1937, is involved in this cause and said Act reads as follows: (Said Bill #760 of 1937 Legislature of the State of Florida is omitted for the reason that same appears in this record on pages 7 to 10, inclusive.)

The above and foregoing statute has not been printed in the bound volume by the Secretary of State, but was held by the Supreme Court of the State of Florida to be properly passed and became an effective law of the State of Florida, in the case of *State ex rel. Florida Portland Cement Company* v. *Hale et al.*, 176 So. 577, and is set out in full therein.

(c) The date of the final order or decree sought to be reviewed is June 14, A. D. 1938, and the date upon which the application for appeal is presented is the 6th day of September, A. D. 1938.

(d) The plaintiff, Bimco Trading, Inc. (one of the appellees), in this cause, is a corporation organized and existing under the laws of the State of New York, and a citizen and resident thereof, engaged in the importation of cement from the Kingdom of Denmark and Belgium into the State

of Florida, and in its said business, has contracts with citizens of the State of Florida, for the sale of cement imported by it and to be imported.

It is the duty of the State Road Department of the State of Florida to enforce the provisions of Senate Bill No. 760, Act of the Legislature of the State of Florida, 1937, which is quoted in full in paragraph 2 above, and to inspect all cement imported into the State of Florida from any foreign country and sold or offered for sale or to be used in the State of Florida, and to affix thereto evidence showing that said cement has been so inspected, and to collect therefor the inspection fees fixed by said Act. Said Act was passed by the Legislature of the State of Florida under the authority and power specifically reserved in the States by Article I, Section 10, Clause 2 of the Constitution of the United States, to lay imposts and duties on imports or exports, which may be absolutely necessary for executing its inspection laws. A mandamus action was brought against the defendants (appellants) in the Supreme Court of Florida to compel the enforcement of said Act, and said Supreme Court, on October 12, 1937, in denying motion to quash the alternative writ, held that said Act was properly and regularly passed and enacted by the Legislature of Florida, and was within the power of the Legislature of Florida to enact, the opinion of said Supreme Court being reported in *State ex rel. Florida Portland Cement Co.* v. *Hale et al.*, 176 So. 577, referred to *supra*.

While said mandamus proceeding was pending before said Supreme Court and its alternative writ outstanding against the defendants, the plaintiff, Bimco Trading, Inc., on November 4, 1937, filed its bill of complaint in the United States District Court in and for the Northern District of Florida, seeking to enjoin the defendants, as and constituting the State Road Department of Florida, from enforcing said

Act in the respects hereinabove mentioned, claiming that said Act was unconstitutional and void, because it conflicted with:

(1) Article 1, Section 8, of the Constitution of the United States, as this would constitute a direct burden on foreign commerce and would prohibit the importation in the State of Florida of a legitimate article of commerce.

(2) The 14th Amendment to the Constitution of the United States, as it denies to plaintiff the equal protection of the law and infringes on the right of contract.

(3) Article 1, Section 10 of the Constitution of the United States, as it levies an impost or duty on foreign commerce.

The plaintiff, Broward County Port Authority, a public corporation, was permitted to intervene in said cause as a party plaintiff on November 26th, 1937.

A three-judge statutory court convoked under Section 266 of the Judicial Code, being Section 380, Title 28, U. S. C. A. upon a hearing granted an interlocutory injunction which was filed November 27, 1937, restraining and enjoining the defendants, as and constituting the State Road Department of the State of Florida, from enforcing said Act in the respects above mentioned, which order also had the effect of enjoining the proceeding in said mandamus case pending before the Supreme Court of Florida hereinabove referred to, but made no findings of fact or conclusions of law, and rendered no opinion therein.

On June 14th, A. D. 1938, the court entered its final decree permanently and perpetually restraining and enjoining the defendants, as and constituting the State Road Department of the State of Florida, from enforcing said Act of the Legislature of the State of Florida, known as Senate Bill No. 760 of 1937, in the respects above pointed out. The court made no findings of facts or conclusions of law, and wrote no opinion therein.

This appeal involves the following substantial questions:

Question No. 1. Does not Section 265 of the Judicial Code, being Section 379, Title 28, of U. S. C. A., prohibit a United States District Court from enjoining the enforcement of a State statute, when the effect of such injunction is to stay proceedings in a state court?

Prior to the institution of this suit in the United States District Court in and for the Northern District of Florida, there had been instituted in the Supreme Court of the State of Florida a mandamus suit against these defendants, as and constituting the State Road Department of the State of Florida, to require them to enforce said statute, and said Supreme Court of Florida issued its alternative writ of mandamus, directed to these defendants, requiring them to show cause why said Act should not be enforced. These defendants filed in said mandamus proceedings their demurrer and motion to quash said alternative writ, challenging said Act, and the said Supreme Court of Florida, in passing upon said demurrer and motion to quash, denied the same and sustained said Act and allowed these defendants 10 days within which to file their answer or return to said alternative writ, and provided that in default thereof, peremptory writ would issue. With the record in said mandamus action in this status, plaintiff, on November 4, 1937, instituted this action in the United States District Court in and for the Northern District of Florida. Thereafter, injunctive orders as hereinabove set forth were entered. Defendants contend that the effect of the injunctions entered in this cause was to stay said mandamus proceeding pending and undisposed of in the Supreme Court of Florida, and that the entering of said injunction was a violation of said Section 265 of the Judicial Code, being Section 379 of Title 28, U. S. C. A.

**Question No. 2. Does a State have the power, under Clause 2, Section 10, Article 1 of the Constitution of the United States to enact, through its legislature, a statute which fixes a minimum standard of an article of commerce and requires the inspection of and lays an inspection fee on such articles, when imported into said State from a foreign country, to pay the expenses of inspecting such imports?**

**Clause 2, Section 10, Article 1 of the Constitution of the United States, specifically reserves in the States the power to lay imposts or duties on imports or exports, which may be absolutely necessary for executing its inspection laws, and provides that the net produce therefrom shall be for the use of the Treasury of the United States, and that such laws shall be subject to the revision and control of the Congress. Defendants contend that under this Clause of the Constitution of the United States, the Legislature of the State of Florida was specifically authorized and empowered to enact the statute under consideration, and if the amount levied in the statute should exceed the costs of such inspection, the net produce must be accounted for to the Treasury of the United States, and that under the specific provisions of the Constitution, the control and revision of said statute is vested in the Congress, and therefore the court is not concerned with any claim of excessiveness of the inspection fees levied by said statute, and in addition to this, the Act was never put into operation and it has never been demonstrated that the fees levied by said statute will produce more than is absolutely necessary to pay the costs of such inspection.**

**The following cases are believed by appellants to sustain the jurisdiction of the Supreme Court of the United States in respect to this appeal, to wit:**

*Oklahoma Gas & Electric Co. et al.* v. *Oklahoma Packing Co. et al.*, 292 U. S. 386, 54 S. Ct. 732;

*Interstate Busses Corp.* v. *Blodgett Tax Comr. of Conn. et al.*, 276 U. S. 245, 48 S. Ct. 230;

*Clark* v. *Poor*, 274 U. S. 554, 47 S. Ct. 702;
*Smith* v. *Wilson*, 273 U. S. 388, 47 S. Ct. 385;
*Hays* v. *Brown of Seattle et al.*, 251 U. S. 233, 40 S. Ct. 125.

The appellants here now submit that the Supreme Court of the United States has jurisdiction of this appeal and that the appellants are entitled to be heard as of right upon appeal, pursuant to Section 266 of the Judicial Code, being Section 380, Title 28, U. S. C. A.

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